

facility and that it be operated for a period of time as, in the judgment of the Commission, the public convenience and necessity or the production program of the Department may require, or until a license for operation of the facility shall become effective. Just compensation shall be paid for the use of the facility.

[40 FR 8790, Mar. 3, 1975]

**§ 50.103 Suspension and operation in war or national emergency.**

(a) Whenever Congress declares that a state of war or national emergency exists, the Commission, if it finds it necessary to the common defense and security, may,

(1) Suspend any license it has issued.

(2) Cause the recapture of special nuclear material.

(3) Order the operation of any licensed facility.

(4) Order entry into any plant or facility in order to recapture special nuclear material or to operate the facility.

(b) Just compensation shall be paid for any damages caused by recapture of special nuclear material or by operation of any facility, pursuant to this section.

[21 FR 355, Jan. 19, 1956, as amended at 35 FR 11416, July 17, 1970; 40 FR 8790, Mar. 3, 1975]

**BACKFITTING**

**§ 50.109 Backfitting.**

(a)(1) Backfitting is defined as the modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position after:

(i) The date of issuance of the construction permit for the facility for facilities having construction permits issued after October 21, 1985; or

(ii) Six months before the date of docketing of the operating license application for the facility for facilities

having construction permits issued before October 21, 1985; or

(iii) The date of issuance of the operating license for the facility for facilities having operating licenses; or

(iv) The date of issuance of the design approval under appendix M, N, or O of part 52.

(2) Except as provided in paragraph (a)(4) of this section, the Commission shall require a systematic and documented analysis pursuant to paragraph (c) of this section for backfits which it seeks to impose.

(3) Except as provided in paragraph (a)(4) of this section, the Commission shall require the backfitting of a facility only when it determines, based on the analysis described in paragraph (c) of this section, that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit and that the direct and indirect costs of implementation for that facility are justified in view of this increased protection.

(4) The provisions of paragraphs (a)(2) and (a)(3) of this section are inapplicable and, therefore, backfit analysis is not required and the standards in paragraph (a)(3) of this section do not apply where the Commission or staff, as appropriate, finds and declares, with appropriated documented evaluation for its finding, either:

(i) That a modification is necessary to bring a facility into compliance with a license or the rules or orders of the Commission, or into conformance with written commitments by the licensee; or

(ii) That regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security; or

(iii) That the regulatory action involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate.

(5) The Commission shall always require the backfitting of a facility if it determines that such regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is